

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:WR:SCA:LN:TL-N-4662-99

JAMoon

date: AUG 27 1999

to: Chief, Examination Division, Southern California District  
Lorna Fenton, Case Manager  
Joe Rayburn, Revenue Agent  
CE 1103, Santa Ana

from: District Counsel, Southern California District, Laguna Niguel  
June Y. Bass, Assistant District Counsel  
Jenny A. Moon, Attorney *JAM*

---

subject: [REDACTED] (EIN: [REDACTED])  
Taxable Years Ended [REDACTED] and [REDACTED]  
Issue: Statute Extension  
Statute of Limitations: [REDACTED] (for [REDACTED] and [REDACTED] (for [REDACTED])

THIS ADVICE CONSTITUTES RETURN INFORMATION SUBJECT TO I.R.C. § 6103.  
THIS ADVICE CONTAINS CONFIDENTIAL INFORMATION SUBJECT TO ATTORNEY-CLIENT AND DELIBERATIVE PROCESS PRIVILEGES AND IF PREPARED IN CONTEMPLATION OF LITIGATION, SUBJECT TO THE ATTORNEY WORK PRODUCT PRIVILEGE. ACCORDINGLY, THE EXAMINATION OR APPEALS RECIPIENT OF THIS DOCUMENT MAY PROVIDE IT ONLY TO THOSE PERSONS WHOSE OFFICIAL TAX ADMINISTRATION DUTIES WITH RESPECT TO THIS CASE REQUIRE SUCH DISCLOSURE. IN NO EVENT MAY THIS DOCUMENT BE PROVIDED TO EXAMINATION, APPEALS, OR OTHER PERSONS BEYOND THOSE SPECIFICALLY INDICATED IN THIS STATEMENT. THIS ADVICE MAY NOT BE DISCLOSED TO TAXPAYERS OR THEIR REPRESENTATIVES.

THIS ADVICE IS NOT BINDING ON EXAMINATION OR APPEALS AND IS NOT A FINAL CASE DETERMINATION. SUCH ADVICE IS ADVISORY AND DOES NOT RESOLVE SERVICE POSITION ON AN ISSUE OR PROVIDE THE BASIS FOR CLOSING A CASE. THE DETERMINATION OF THE SERVICE IN THE CASE IS TO BE MADE THROUGH THE EXERCISE OF THE INDEPENDENT JUDGMENT OF THE OFFICE WITH JURISDICTION OVER THE CASE.

This memorandum is in response to your request for our advice in determining the proper party to execute the statute extension, Form 872, for [REDACTED]

██████████ for taxable years ended December 31, ██████████ and ██████████ (short year). The current statutes of limitations for ██████████ and ██████████ expire on ██████████ and ██████████ respectively. This advice has been coordinated with the Office of Chief Counsel.

### FACTS<sup>1</sup>

Prior to ██████████ ██████████ filed consolidated tax returns. On ██████████ ██████████ was purchased by ██████████ in a stock for stock purchase. Consequently, ██████████ filed a tax return for short taxable year ended ██████████. Moreover, ██████████ became a part of ██████████'s consolidated group and was included in ██████████'s consolidated returns starting with taxable year ended March 31, ██████████. An officer of ██████████ ██████████ represented to ██████████ the IRS revenue agent, that ██████████ did not assume any of ██████████'s prior year tax liabilities.

In ██████████ ██████████ and its consolidated group were acquired by ██████████ ██████████, which in turn was wholly owned by a French corporation. ██████████ paid cash for all of ██████████'s stock, and ██████████ became a subsidiary of ██████████. ██████████'s EIN is ██████████. ██████████ represented to ██████████ that both ██████████ and ██████████ are still in existence, with the same respective EINs.<sup>2</sup> ██████████ believes that ██████████ assumed the tax liabilities of ██████████ and its consolidated group.

██████████'s tax returns, Forms 1120, for ██████████ and ██████████ were signed by ██████████ ██████████ who was, and still is, the Assistant Treasurer of ██████████ as well as the Vice President of Tax for ██████████. ██████████ has stated that he has the authority to sign a statute extension on behalf of ██████████.

### DISCUSSION

I.R.C. § 1502 provides that the consolidated return regulations promulgated by the

---

<sup>1</sup> Our understanding of the facts of this case is limited to the facts you presented to us orally. We have not undertaken any independent investigation of the facts of this case. If the actual facts were to be different from the facts known to us, our legal analysis and our conclusions and recommendations might be different. Accordingly, if you learn that the facts known to us are incorrect or incomplete in any material respect, you should not rely on the opinions set forth in this memorandum, and should contact our office immediately.

<sup>2</sup> We recommend that you make certain that ██████████ is still in existence with the same EIN. To accomplish this, you may want to contact ██████████'s registered agent, confirm ██████████'s corporate status with the Secretary of State where ██████████ is incorporated, and research whether ██████████ or ██████████ has filed Forms 966, Corporate Dissolution or Liquidation.

Service shall govern the determination, computation, and assessment of tax of an affiliated group of corporations making a consolidated return and its constituent corporations. Treas. Reg. §§ 1.1502-77 and -77T provide the rules for determining how a statute is extended by agreement. Generally, the common parent of an affiliated group is the agent for the group in just about all tax procedural matters, including signing a statutory extension for the tax year involved. Treas. Reg. § 1.1502-77(a).

Given your representation that [REDACTED] still exists, [REDACTED] is the proper party to execute the Form 872. A Form 872 executed by [REDACTED] would extend the statute of limitations for all surviving members of the [REDACTED] consolidated group for the taxable years at issue. See Treas. Reg. § 1.1502-77(c).

Moreover, under Rev. Rul. 83-41, 1983-1 C.B. 349, clarified and amplified by Rev. Rul. 84-165, 1984-2 C.B. 305, an individual who is authorized under I.R.C. § 6062 to sign the original return will also have the authority to execute the statute extension. I.R.C. § 6062 provides that generally, a corporation's income tax returns must be signed by its president, vice-president, treasurer, assistant treasurer, chief accounting officer, or any other officer duly authorized to act. The fact that an individual's name is signed on the return is prima facie evidence that the individual is authorized to sign the return. Here, given that [REDACTED] was, and still is, an Assistant Treasurer of [REDACTED] and that he signed the corporate returns for the taxable years at issue, he is authorized to sign the statute extension on behalf of [REDACTED].

The caption of the Form 872 should read as follows:

[REDACTED] (EIN: [REDACTED]) \*

Place an asterisk on the bottom of the front page of the Form 872, and type in:

\*this is with respect to the consolidated return liability of the [REDACTED]  
[REDACTED] consolidated group for tax year ended  
December 31, [REDACTED] and short tax year ended [REDACTED]

The signature block on the Form 872 should read:

[name of officer]

[title of officer]  
[REDACTED]

Please double check all names, EINs, and the taxable years.

If you have any questions, please contact Jenny A. Moon at (949) 360-3431.